

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERICA T. YITZHAK, THE LAW OFFICES OF
ERICA T. YITZHAK AND ERICA T. YITZHAK,
ESQ. P.C.,

Plaintiffs,

-against-

PAUL WILLIAM VERNER, VERNER AND
SIMON, VERNER AND SIMON, P.C., VERNER
AND SIMON, LLP,

Defendants.

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Docket No.:

**PETITION FOR
REMOVAL OF ACTION
UNDER 28 U.S.C.
§1446(a) DIVERSITY**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK:**

PLEASE TAKE NOTICE that Defendants PAUL WILLIAM VERNER; VERNER
SIMON, i/s/h/a VERNER AND SIMON; VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON,
P.C.; and VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP, hereby submit this Petition
for Removal, with full reservation of all defenses, from the Supreme Court of the State of New York,
County of New York, to the United States District Court, SOUTHERN DISTRICT of New York in
accordance with 28 U.S.C. §1446 and respectfully represents as follows:

PLAINTIFF'S COMPLAINT AND NATURE OF THE ACTION

1. On November 14, 2022, this legal malpractice action was filed against Defendants PAUL WILLIAM VERNER, VERNER AND SIMON, VERNER AND SIMON, P.C., and VERNER AND SIMON, LLP in the Supreme Court of the State of New York, County of New York, bearing Index Number 159789/2022.
2. Pursuant to 28 U.S.C. §1446(a), a copy of the Summons and Complaint is annexed hereto as **Exhibit “A.”**

3. In the Complaint, Plaintiffs allege causes of action for legal malpractice, breach of contract for fees, and breach of fiduciary duty. See, **Exhibit "A."**

4. The allegations within the Complaint arise out the representation of Plaintiffs by PAUL WILLIAM VERNER, through the d/b/a VERNER SIMON, pursuant to a Retainer Letter dated October 17, 2017. See, the fully executed October 17, 2017 Retainer Letter annexed hereto as **Exhibit "B."**

DIVERSITY JURISDICTION IS PROPER

5. No further proceedings have been had in the Supreme Court of the State of New York, County of New York, as of the date of the filing of this Petition for Removal.

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1332.

7. The Complaint alleges a matter in controversy, which, if liability is established, is reasonably probable to exceed the sum or value of \$75,000, exclusive of interest and costs and complete diversity of citizenship exists between Plaintiffs and the Defendants.

DIVERSITY EXISTS

8. This firm represents Defendants PAUL WILLIAM VERNER; VERNER SIMON, i/s/h/a VERNER AND SIMON; VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON, P.C.; and VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP (hereinafter collectively referred to as "the Defendants").

9. Defendants seek removal of this action pursuant to 28 U.S.C. §1446 and Local Civil Rule 81.1, which permits removal of causes of action based upon diversity of citizenship of the parties.

10. At the time Plaintiffs filed the New York County Supreme Court action, Defendant PAUL WILLIAM VERNER was, and continues to be a resident of the State of Colorado. He is registered to vote in La Plata County, Colorado, maintains a Colorado driver's license and registers

his vehicle in Colorado. The address listed on his Tax Returns is 9257 High Meadows Ranch, Durango, CO 81301. He currently resides in the State of California. See Exhibit "C."

11. At the time Plaintiffs filed the New York County Supreme Court action, Defendant VERNER SIMON, i/s/h/a VERNER AND SIMON was and continues to be the "DBA" for both Defendant PAUL WILLIAM VERNER individually, and non-party VERNER SIMON INC.

12. Non-party VERNER SIMON INC. was and still is a corporation duly organized and existing under the laws of the State of New Jersey, with its principal place of business located at One Greentree Centre, 10000 Lincoln Drive East, Suite 201, Marlton, New Jersey 08053. See Exhibit "D."

13. At the time Plaintiffs filed the New York County Supreme Court action, Defendant VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON, P.C. was inactive as it had been dissolved by proclamation and inactive since July 28, 2010. See Exhibit "E."

14. At the time Plaintiffs filed the New York County Supreme Court action, Defendant VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP was inactive. In fact, Defendant VERNER SIMON, LLP has been inactive since December 29, 2004. See Exhibit "F."

15. Pursuant to 28 U.S.C. section 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

16. For the purposes of federal diversity jurisdiction, based upon the above, Defendants PAUL WILLIAM VERNER and VERNER SIMON, i/s/h/a VERNER AND SIMON are not citizens of the State of New York.

17. Defendants VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON, P.C. and VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP had been inactive for more than

twelve years prior to Plaintiffs' initiation of the New York County Supreme Court Action and that fact is a matter easily acquired public record.

18. In fact, Defendants VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON, P.C. and VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP were inactive at the time Plaintiffs retained Defendants PAUL WILLIAM VERNER and VERNER SIMON, i/s/h/a VERNER AND SIMON on October 17, 2017. See, **Exhibit "B."** As such, neither inactive entity is a proper Defendant and cannot be considered for the purpose of evaluating diversity jurisdiction.

19. Pursuant to Plaintiffs' Summons and Complaint, Plaintiffs claim to be citizens of the State of New York with a residence in the County of Nassau. See, **Exhibit "A."**

20. As such, there is complete diversity of citizenship between Plaintiffs and the proper Defendants PAUL WILLIAM VERNER and VERNER SIMON as well as non-party VERNER SIMON, INC.

21. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441.

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

22. Plaintiffs seek recovery for an amount in excess of \$75,000, exclusive of interest and costs.

23. Plaintiffs allege in their Complaint that the Defendants committed legal malpractice that resulted in Plaintiffs being held on a judgment in the amount of \$1,000,000, plus interest retroactive to the 2016 date of commencement. See, **Exhibit "A"** at ¶¶ 49-79.

24. Given the damages alleged, this action fulfills the amount in controversy requirement.

25. The Defendants reserve the right to contest the nature and extent of liability of Plaintiffs' damages.

26. Nevertheless, if liability is ever established, the allegations made by Plaintiffs in their Complaint, if proven, may convince a trier of fact to award such injured Plaintiffs an amount in excess of \$75,000.

REMOVAL IS TIMELY

27. Pursuant to 28 U.S.C. §1446(b), which provides that a Notice of Removal shall be filed within thirty (30) days after receipt by the Defendants, by service or otherwise, of the initial pleading or of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. Here, the instant Petition is filed within thirty days (30) days after receipt by the Defendants of the summons and complaint commanding them to appear and to file a written answer to the Plaintiffs' complaint. See Exhibit "G."

NOTICE

28. Pursuant to 28 U.S.C. §1446, a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York.

VENUE IS PROPER

29. The United States District Court for the SOUTHERN DISTRICT of New York includes the county in which the state court action was pending (New York County) and thus, pursuant to 28 U.S.C. §124(b)(2), venue is proper.

RESERVATION OF DEFENSES AND RIGHTS

30. The Defendants reserve all defenses, including, without limitation, the defense of lack of personal jurisdiction.

31. The Defendants reserve the right to amend or supplement this Petition for Removal.

32. If any question arises as to the propriety of the removal of this action, the Defendants respectfully request the opportunity to present a brief and oral argument in support of its position that this case is removable.

THEREFORE, all parties to the Civil Action pending in the Supreme Court of the State of New York, County of New York, Index No. 159789/2022 are HEREBY NOTIFIED pursuant to 28 U.S.C. §1446 and Local Civil Rule 81.1, as follows:

Removal of the Civil Action and all claims and causes of action therein is effected upon the filing of a copy of this Notice of Removal with the Clerk of the State Court pursuant to 28 U.S.C. §1446.

The Civil Action is removed from the State Court to the United States District Court, SOUTHERN DISTRICT of New York. The parties to the Civil Action shall proceed no further in the State Court.

WHEREFORE, Defendants PAUL WILLIAM VERNER; VERNER SIMON, i/s/h/a VERNER AND SIMON; VERNER SIMON, P.C., i/s/h/a VERNER AND SIMON, P.C.; and VERNER SIMON, LLP, i/s/h/a VERNER AND SIMON, LLP pray that this cause of action now pending in the Supreme Court of the State of New York, County of New York, be removed to the United States District Court, SOUTHERN DISTRICT of New York.

Dated: New York, New York
March 10, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused the **PETITION FOR REMOVAL OF ACTION UNDER 28 U.S.C. §1446(a) DIVERSITY and RULE 7.1 DISCLOSURE** to be served on Friday, March 10, 2023 via CM/ECF upon the attorneys of record for all parties.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

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